IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.14371 of 2006
DATE OF DECISION: 8.9.2006
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Haryana Urban Development Authority, Hisar

..PETITIONER

VS.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.

HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Jangvir Singh Hooda, Advocate
for the petitioner.
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JUDGMENT:

The petitioner-department is aggrieved with the award dated 9.2.2006 passed by respondent No.1-Labour Court (Annexure P-1). By virtue of the impugned award the Labour Court held the termination of respondent No.2-workman in gross violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act) and accordingly ordered his re-instatement with continuity of service and other consequential service benefits along with 50% back wages.

What emerges out from the record is that respondent No.2-workman challenging his termination raised an industrial dispute. His stand was that he served the petitioner-department as Survey Khalasi from 20.9.1995 to 30.11.1996. However, his services were terminated without giving any notice or retrenchment compensation. Besides, allegations of unfair labour practice on the part of department by retaining persons junior to him, were levelled. It is also his case that he was not paid any wages from

6.9.1996 to 30.11.1996 despite letter dated 24.1.1997 written by Estate Officer, in this regard. The department contested the claim of the workman on the averments that the workman never completed 240 days of service and he himself abandoned the job. The Labour Court vide the impugned award answered the reference in the manner noticed above. Hence the present writ petition.

We have heard the learned counsel for the petitioner and have perused the paper book as also the impugned award.

Firstly, it has been argued on behalf of the petitioner-department that the services of the workman were never terminated, rather he himself abandoned the job after September 1996. This plea is not sustainable. The question whether the employee has abandoned his service or not is a question which is required to be resolved in the light of facts and circumstances of each case. There cannot be any strait-jacket formula in that regard. A bare perusal of the impugned award shows that a letter bearing No.1500-01 dated 24.1.1997 had been written by the Estate Officer, HUDA to the Chief Administrator regarding payment of wages from 6.9.1996 to 30.11.1996. The same has not has not been specifically denied by the petitioner. Thus, the Labour Court, on the basis of said letter, has rightly drawn an inference against the department and has upheld the version of the workman of his having worked upto November 1996. Accordingly, the plea of abandonment of services by the workman after September 1996 has rightly been turned down by the Labour Court. Thus, in the peculiar facts and circumstances of this case, the Labour Court has rightly concluded that this plea is only to wriggle out of Section 25-F of the Act

Further, the Learned counsel for the petitioner has argued that

the respondent-workman had not completed 240 days in preceding twelve calendar months. Moreover, his claim was not maintainable due to delay and laches. The arguments are not tenable. It is now well settled proposition of law as held in **Range Forest Officer Vs. S.T. Hadmani JT 2002 (2) SC 238, Manager, Reserve Bank of India, Bangalore Vs. S. Mani and others, 2005 (5) SCC 100** and **R.M. Yellati Vs. The Asst. Executive Engineer, 2006 (1) SCC 106,** that burden of proof is on the workman to show that he had in fact worked for more than 240 days in the year preceding his termination. This burden has to be discharged by the workman by adducing cogent and sufficient evidence. The stand of the workman right from the beginning was that he had worked as Survey Khalasi w.e.f. 20.9.1995 till his services were illegally terminated on 30.11.1996. A bare perusal of the award shows that muster rolls Ex.W1 to Ex.W13 were produced by the workman before the Labour Court, which revealed he had worked for more than 240 days during the period September 1995 to September 1996. Further, this fact was also admitted by petitioner's own witness namely Vir Bhan (MW1). The award further shows that on an application moved by the workman, the Labour Court directed the department to produce the record relating to the workman for the period October and November 1996. But due to the reasons best known to it, the department did not produce the said record despite availing ample opportunities. The record was with the department. They were required to maintain it in due course of their business, as envisaged under Section 25-D of the Act. The department was heavily burdened to produce the same when there were specific orders by the Court. The department, withheld the relevant record of the workman, for the said period. Considering this fact

coupled with the letter written by the Estate Officer regarding payment of wages from 6.9.1996 to 30.11.1996, referred to above, the Labour Court has rightly drawn an adverse inference against the department and has upheld the version of the workman of his having worked upto November 1996. Nothing has been shown to us to take a contrary view. This Court is left with no other option but to endorse the view of adverse inference taken by the Labour Court.

Moreover, the plea of limitation was available with the petitioner-department before the Labour Court. But no such plea had been raised by the petitioner-department. Thus, the petitioner-department cannot be permitted to raise such a plea before this Court. for the first time

In view of what has been stated above, we find no infirmity or illegality in the findings arrived at by the Labour Court. No interference is called for. The petition is wholly without merit and the same is dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J.S. NARANG)
JUDGE

September 8,2006
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